## IN THE UNITED STATES ARMY FIRST JUDICIAL CIRCUIT

| UNITED STATES                          | ) |                          |
|--|---|--------------------------|
|  | ) | RULING: GOVERNMENT       |
|  | • | MOTION FOR MRE 505(g)(2) |
| V                                      | ) | REDACTIONS - ONCIX       |
| •                                      | ) | DAMAGE ASSESSMENT        |
| MANNING, Bradley E., PFC               | ) |                          |
| U.S. Army, (b) (6)                     | ) |                          |
| Headquarters and Headquarters Company, | ) |                          |
| U.S. Army Garrison, Joint Base Myer-   | ) | DATED: 23 August 2012    |
| Henderson Hall, Fort Myer, VA 22211    | ) | Ū                        |

On 3 August 2012, the Government filed a classified motion moving the Court to conduct an *ex parte* review of the damage assessment prepared by the Office of National Counterintelligence Executive (ONCIX) and to authorize redactions of classified information from the damage assessment IAW MRE 505(g)(2). The Court conducted an *in camera* review of both the damage assessment and the proposed redactions. In coming to this ruling, the Court has considered the factors requested by the Defense in its 21 August 2012 submission.

- a) What is the extent of the redactions/substitutions?
- b) Has the Government narrowly tailored the substitutions to protect a Governmental interest that has been clearly and specifically articulated?
- c) Does the substitution provide the Defense with the ability to follow-up on leads that the original document would have provided?
- d) Do the substitutions accurately capture the information within the original document?
- e) Is the classified evidence necessary to rebut an element of the 22 charged offenses, bearing in mind the Government's very broad reading of many of these offenses?
- f) Does the summary strip away the Defense's ability to accurately portray the nature of the charged leaks?
- g) Do the substitutions prevent the Defense from fully examining witnesses?
- h) Do the substitutions prevent the Defense from exploring all viable avenues for impeachment?
- i) Does the Government intend to use any of the information from the damage assessments? If so, is this information limited to the summarized document provided by the Government? If the information intended to be used by the Government is not limited to the summarized document, does the Defense in fairness need to receive the classified portions of the documents to put the Government's evidence in proper context?
- j) Does the original classified evidence present a more compelling sentencing case than the proposed substitutions by the Government?
- k) Do the proposed substitutions prevent the Defense from learning names of potential witnesses?
- l) Do the substitutions make sense, such that the Defense will be able to understand the context?
- m) Is the original classified evidence necessary to help the Defense in formulating defense strategy and making important litigation decisions in the case?
- n) Is it unfair that the Government had access to the unclassified version of the damage assessment and the Defense did not? Does that provide a tactical advantage to the Government?

The ONCIX damage assessment remains in draft, however, no substantive changes are anticipated. The Government will keep apprised of any changes to the damage assessment and notify both the Court and the Defense of any substantive change to it.

The Government has advised the Court that nothing redacted will be used by the Government during any portion of the trial.

The ONCIX Damage Assessment, as redacted, meets the Government's discovery obligations under *Brady* and RCM 701(a)(6) to disclose evidence tending to reasonably negate the guilt of the accused to an offense charged, reduce the degree of guilt to an offense charged, or reduce the punishment. The ONCIX Damage Assessment, as redacted, also provides the Defense with evidence that is material to the preparation of the defense and relevant and necessary for production IAW MRE 703(f).

The redacted ONCIX Damage Assessment is disclosed to the Defense almost in its entirety. The redacted information not disclosed to the Defense is not favorable, material to the preparation of the defense, or relevant and necessary for production under RCM 703(f). The Government is ordered that no portion of the ONCIX Damage Assessment not disclosed to the Defense will be used by the Government or any Government witness during any portion of the trial. This includes rebuttal and rule of completeness if Defense introduces or references anything in the substitution.

The substitution is sufficient for the Defense to adequately prepare for trial and represents an appropriate balance between the right of the Defense to discovery and the protection of specifically identified national security information.

**RULING:** The Classified motions by the Government to voluntarily provide limited disclosure under MRE 505(g)(2) for the ONCIX Damage Assessment is **GRANTED.** 

ORDERED this 23<sup>nd</sup> day of August 2012.

DENISE R. LIDYD

COL, JA

Chief Judge, 1st Judicial Circuit